

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1623 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAMNADAS J HINGU

Versus

DELETED

Appearance:

MR MC SHAH for Petitioners

MR MD PANDYA for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 09/03/2000

ORAL JUDGEMENT

1. Appellants, who are original applicants, have filed this appeal under Section 110-D of the Motor Vehicles Act, 1939, claiming enhanced compensation by challenging judgment and award dated January 1, 1982, passed by the Motor Accident Claim Tribunal (Main), at Surendranagar, in Claim Petition No.186 of 1982, whereby, the Tribunal awarded compensation of Rs.20,400/- with interest at the rate of 6% per annum from the date of application till realisation with proportionate costs.

2. The appellants were parents of deceased Ishwarbhai, aged 20, who succumbed to the injuries sustained by him in a vehicular accident, which took place in the night of November 1, 1981 due to rash and negligent driving of bus bearing RTO registration No.GRT 7432, by respondent No.1, belonging to respondent No.2. As per the case of the appellants, deceased Ishwarbhai was hale and hearty and was doing tailoring work and earning Rs.25 to Rs.30 per day and was also having a shop on annual rent of Rs.450/-, wherein he was doing tailoring work. According to the applicants, applicant No.1 was suffering from T.B. since last seven years and was taking treatment from TN Hospital of Darbar Gopaldas at Anand. As per the case of the applicants, both the parents were depending solely on the income of deceased son.

3. The applicants, therefore, filed Claim Petition No.186 of 1982 before the Tribunal claiming compensation of Rs.1,50,000/- for untimely death of their son and breadwinner, who died in the vehicular accident.

4. The claim petition was resisted by the respondents by filing their reply at Exh.12, inter alia, contending that the accident in question did not take place due to rash and negligent driving of respondent No.1. That, respondent No.1 was not in a position to see the vehicle that was going ahead and, with a view to avoid the accident, all of a sudden respondent No.1 had taken the bus on the left side. That, on account of some mechanical defect, the bus had turned turtle on the left side of the road. The respondents further contended that the accident had taken place due to unavoidable circumstances and, therefore, the respondents were not liable to pay any compensation to the applicants.

5. On the rival assertions of the parties, the Tribunal framed issues at Exh.11. On behalf of the applicants, applicant No.1 was examined at Exh.15 and he produced school leaving certificate at Exh.16 to show the age of deceased Ishwarbhai. As per the school leaving certificate Exh.16, deceased Ishwarbhai at the time of incident was aged 20 years. The Tribunal, on appreciation of evidence, held that respondent No.1, who was at the relevant time driver of S.T. Bus No.GRT 7432, was rash and negligent in driving the said Bus and the accident had taken place due to his negligence. The Tribunal assessed monthly income of deceased Ishwarbhai at Rs.300/- per month and deducted Rs.75 as personal expenses. Taking into consideration net income of Rs.225/- per month, the dependency benefit of the

applicants was assessed at Rs.75/- per month, i.e. Rs.900 per year. Looking to the age of the deceased and the age of the applicants, the Tribunal adopted multiplier of 16 and awarded sum of Rs.14,400/- as compensation to the applicants. The Tribunal also awarded Rs.5000/- on the head of loss of expectation of life and Rs.1000/- as transportation charges.

3. Learned counsel for the parties have taken us through entire record and proceedings of the case. Learned counsel for the appellants has submitted that the amount of compensation awarded by the Tribunal is grossly inadequate. It is further submitted by learned counsel for the appellants that the Tribunal has erred in assessing monthly income of deceased Ishwarbhai at Rs.300/-. The above submission of the learned advocate for the appellants deserves merit and requires to be accepted. The deceased was doing tailoring work in a shop and was paying annual rent of Rs.450/- for the said shop. The Tribunal has erred in not appreciating that, as per the evidence of the applicants, the deceased was earning Rs.25 to Rs.30 per day. Taking into consideration the income of the deceased at Rs.750/- per month, dependency benefit of the appellants can be assessed at Rs.250/- per month, and, multiplied by 12 months, Rs.3000/- per year. In our opinion, the Tribunal rightly adopted multiplier of 16 looking to the age of the deceased and looking to the age of the applicants. If the multiplier of 16 is adopted to the datum figure of Rs.3000/-, the applicants would be entitled to compensation of Rs.48,000/- for untimely death of their son and breadwinner of the family. Admittedly, respondent No.1, at the relevant time, was driving the bus in question belonging to respondent No.2 and, therefore, both the respondents shall be jointly and severally liable to pay compensation to the appellants. The appellants are also entitled to amount of Rs.10,000/- being conventional amount under the head of loss of expectation of life because of untimely death of deceased Ishwarbhai. The applicants are also entitled to Rs.2000/- as charges for funeral expenses and transportation. Thus the appellants would be entitled to compensation as under:

Rs.48,000/- As Compensation for untimely death of son

Rs.10,000/- Under the head of loss of
expectation of life

Rs.02,000 Under the head of funeral
and transportation expenses

Rs.60,000/-

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The Tribunal had already awarded compensation of Rs.20,400/- which shall have to be deducted from the amount of Rs.60,000/-. Thus, the appellants would be entitled to get additional compensation of Rs.39,600/with interest at the rate of 9% per annum from the date of application till realisation, with proportionate costs of this appeal.

As a result of foregoing discussion, the appeal is partly allowed. The judgment and award dated January 1, 1982, passed by the Motor Accident Claim Tribunal (Main), at Surendranagar, in Claim Petition No.186 of 1982, is modified to the extent that the appellants would be entitled to enhanced compensation of Rs.60,000/-. It is further held that the appellants would be entitled to interest on additional compensation of Rs.39,600/ at the rate of 9% per annum from the date of application till realisation, with proportionate costs of this appeal. The Office is directed to draw decree in terms of this judgment.

(swamy)